

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 27, 2013 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	13-33102-D-11	DBS AIR, LLC	MOTION FOR RELIEF FROM
	JRD-1		AUTOMATIC STAY
	GE EQUIPMENT CORPORATE		10-16-13 [12]
	AIRCRAFT TRUST 2012-1, LLC		
	VS.		

This matter will not be called before 10:45 a.m.

2.	13-33102-D-11	DBS AIR, LLC	MOTION TO DISMISS CASE
	JRD-2		10-16-13 [17]

This matter will not be called before 10:45 a.m.

3.	13-33102-D-11	DBS AIR, LLC	MOTION FOR PRELIMINARY
	JRD-3		INJUNCTION
			10-16-13 [18]

This matter will not be called before 10:45 a.m.

4.	12-28704-D-7	BERNIE/JULIETA GALVE	CONTINUED TRUSTEE'S MOTION TO
			DISMISS FOR FAILURE TO APPEAR
			AT SEC. 341(A) MEETING OF
			CREDITORS
			9-17-13 [127]

5.	13-32613-D-7	PATRICIA LAMBERT	MOTION FOR RELIEF FROM
	VVF-1		AUTOMATIC STAY
	AMERICAN HONDA FINANCE		10-18-13 [10]
	CORPORATION VS.		

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates she will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

6.	12-34516-D-7	RICHARD HARVEY AND WENDY	CONTINUED MOTION TO COMPROMISE
	DNL-2	LUENENBERG HARVEY	CONTROVERSY/APPROVE SETTLEMENT
			AGREEMENT WITH RICHARD STEPHEN
			HARVEY AND WENDY LUENENBERG
			HARVEY, PFC INSURANCE CENTER,
			INC., ANGELIQUEA PASSAGLIA AND
			RANDAL FLETCHER
			8-20-13 [52]

7. 13-23621-D-7 PACIFIC ASSET CONTINUED ORDER TO SHOW CAUSE
MANAGEMENT, INC. 6-20-13 [33]

CASE DISMISSED 4/18/13

This matter will not be called before 10:45 a.m.

See ruling for calendar item no. 18.

8. 13-33924-D-7 KELLY ORVICK MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
10-30-13 [5]

9. 13-29030-D-7 WILLIAM/JANET CHENG MOTION TO EXTEND DEADLINE TO
SLF-3 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
10-15-13 [96]

10. 13-31631-D-7 IVAN LATINKIC CONTINUED MOTION FOR RELIEF
NMB-1 FROM AUTOMATIC STAY
KINECTA FEDERAL CREDIT UNION
VS. 10-15-13 [18]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

11. 12-23736-D-7 KATHERINE HAVEN
SSA-3

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH TIMOTHY A. HAVEN
10-15-13 [180]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

12. 13-28336-D-7 JUDITH-EUCHARIA EZIMORA
NLG-1
SETERUS, INC. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-18-13 [22]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on September 23, 2013 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

13. 13-20539-D-7 RICHARD CRANSTON
MJ-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-22-13 [39]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received his discharge on April 29, 2013 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

14. 13-33244-D-7 SCOTT ALEXANDER
EJS-1
TERRACINA PARK MEADOWS, LP
VS

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-30-13 [25]

Final ruling:

This case was dismissed on November 13, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

15. 13-31652-D-7 ARTURO PALMERIN AND MOTION TO COMPEL ABANDONMENT
TOG-1 ENEDINA LEON 10-26-13 [17]

16. 13-30858-D-7 MELODY STRACHAN MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
NATIONSTAR MORTGAGE, LLC VS. 10-15-13 [13]

Final ruling:

This matter is resolved without oral argument. This is Nationstar Mortgage, LLC's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

17. 13-33361-D-7 FABIAN PEREZ MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
10-16-13 [5]

18. 11-26466-D-13 STEVE JOHNSON CONTINUED ORDER TO SHOW CAUSE
6-20-13 [42]

**CASE DISMISSED 5/3/11 AND
CLOSED 9/13/11**

This matter will not be called before 10:45 a.m.

Tentative ruling:

On June 20, 2013 the court issued an order to show cause ("OSC") directed at attorney, Steven Johnson ("Johnson"). The OSC outlines a long list of facial or apparent inaccuracies, misleading statements, errors and/or omissions contained in various bankruptcy petitions, schedules, statements of financial affairs, and/or other documents filed in this court by Johnson in the case of Pacific Asset Management, Inc. ("PAM"), Case No. 13-23621-D-7, and the case of Steve Johnson, Case No. 11-26466-D-13. The OSC requires Johnson to file a response in the form of a written declaration under oath addressing and/or explaining said inaccuracies, misleading statements, errors and/or omissions; the OSC further requires Johnson to

show cause, if any, why he should not be sanctioned for violating Fed. R. Bankr. P. Rule 9011(b).

Pursuant to Johnson's request, the court extended the deadline for Johnson to file his response to the OSC to October 31, 2013, and continued the hearing on the OSC to November 27, 2013. On November 1, 2013, Johnson, through his counsel, filed his response to the OSC (the "Response"). The Response does not address any of the apparent inaccuracies, misleading statements, errors, and/or omissions raised in the OSC; but rather, the Response states that because Johnson is under criminal investigation by the U.S. Attorney regarding the issues raised in the OSC that he asserts his Fifth Amendment right against self-incrimination. Although the Response declines to address the issues in the OSC, the Response does extensively discuss Johnson's mental and physical health. The Response attempts to incorporate purported medical reports and conclusions from Johnson's attending physicians, and discusses excerpts from these records. However, none of the factual assertions contained in the Response are supported by any evidence, nor do the medical reports have a proper evidentiary foundation. Simply put, the Response is replete with factual allegations with rank hearsay without any evidentiary support. As a result, at this time, the court will not consider the factual assertions or medical reports contained in the Response as they are not supported by the evidentiary record.

The United States Trustee ("UST") filed a reply to the Response on November 13, 2013 (the "Reply"). The Reply suggests that Johnson is in the process of winding down his practice and indicates that the UST is in discussions with Johnson and his attorney attempting to craft a resolution that would ensure that the misconduct outlined in the OSC does not occur in the future. The Reply goes on to generally reference various types of sanctions that would be appropriate for Johnson's apparent violations of Rule 9011(b).

As Johnson has chosen to assert his Fifth Amendment privilege and declined to respond to the issues in the OSC, the court can, and does, find that Johnson engaged in the filing of bankruptcy petitions, schedules, statements of financial affairs, and other documents that were intentionally erroneous, inaccurate, misleading, and/or incomplete. The court also finds that Johnson submitted to the court by signing and filing petitions, pleadings, motions, and other papers and documents that were erroneous, inaccurate, misleading, incomplete, and presented for improper purposes, and that the factual representations made by Johnson in these documents were without evidentiary support. Johnson's above-described conduct was in bad faith and in violation of Rule 9011(b).

In light of the above findings and conclusions, the question now before the court is what is the appropriate sanction for Johnson's multiple Rule 9011 violations. The sanctions need to be sufficient to ensure that Johnson does not file bankruptcy cases on behalf of other individuals or represent other parties until such time as Johnson has demonstrated that he has taken the necessary steps to ensure that these ethical breaches will not occur in the future. Relevant to the issuance of sanctions is whether Johnson is currently practicing law and whether he is in the process of winding down his practice. The court is considering suspending/prohibiting Johnson from filing cases in the Eastern District of California, imposing monetary sanctions, and the issuance of other sanctions. Thus, this hearing will be used as a status conference to consider appropriate sanctions.

The court will hear the matter.

19. 13-28667-D-7 CHRISTOPHER/MARI JACQUET MOTION TO AVOID LIEN OF LVNV
MOH-2 FUNDING, LLC
10-31-13 [25]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

20. 13-30574-D-7 PASAO YANG MOTION FOR RELIEF FROM
TJS-1 AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A. 10-21-13 [14]
VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates he will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

21. 12-39878-D-7 DAVID/RENEE SMITH CONTINUED MOTION TO AVOID LIEN
DRE-3 OF GRANITE COMMUNITY BANK,
N.A., PREMIERWEST BANK, CALMAT
CO., AND COLONIAL PACIFIC
LEASING CORPORATION
8-23-13 [100]

22. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM
SES-1 AUTOMATIC STAY
KB HOME GREATER LOS ANGELES, 10-15-13 [1012]
INC. VS.

Final ruling: This matter is resolved without oral argument. This is KB Home Greater Los Angeles, Inc.'s motion seeking relief from automatic stay to pursue available insurance proceeds. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is cause for granting limited relief from stay to allow the moving party to proceed with litigation, as is necessary, to collect against available insurance proceeds. Accordingly, the court will grant limited relief from stay to allow the moving party to proceed to judgment against the debtor for the limited purpose of pursuing any available insurance proceeds. There will be no further relief afforded. Moving party is to submit an appropriate order. No appearance is necessary.

23. 12-33698-D-11 2 ANTIOCH, LLC

CONTINUED ORDER TO SHOW CAUSE
RE DISMISSAL
10-24-13 [136]

This matter will not be called before 10:30 a.m.

24. 13-21199-D-7 JAMES SCOTT
DNL-10

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S), FEES: \$56,645.00,
EXPENSES: \$1,341.35
10-25-13 [204]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

25. 13-33102-D-11 DBS AIR, LLC

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
10-8-13 [1]

This matter will not be called before 10:45a.m.

26. 13-33102-D-11 DBS AIR, LLC
WW-3

CONTINUED MOTION TO SELL
10-22-13 [36]

This matter will not be called before 10:45 a.m.

27. 12-34306-D-7 JACK/BARBARA MCKARSON
BLL-4

CONTINUED MOTION FOR
COMPENSATION FOR BYRON LEE
LYNCH, TRUSTEE'S ATTORNEY(S),
FEE: \$3,955.00, EXPENSES:
\$132.00
10-10-13 [76]

Tentative ruling:

This is the motion of Byron Lee Lynch for a first and final allowance of compensation as counsel for the chapter 7 trustee in this case. The hearing was continued to allow the moving party to correct certain errors in the original notice of hearing. On November 13, 2013, the moving party filed an amended notice of hearing, and served it on the chapter 7 trustee, the United States Trustee, the debtors, their attorney, and one of the attorneys requesting special notice in this case. The moving party did not serve the amended notice of hearing on any of the other creditors in the case, as required by FRBP 2002(a)(6). (The proof of service refers to an attached creditor matrix, but there is nothing attached.) As a result of this service defect, the motion will be denied. Alternatively, if the notice was served on the general creditor matrix, the court will continue the hearing to allow for a corrected proof of service to be filed.

The court will hear the matter.

28. 13-33560-D-7 DARRYL ELAM
KEVIN MUDRON VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-8-13 [14]

Final ruling:

The motion is denied for the following reasons: (1) moving party did not use a docket control number as required by LBR 9014-1(c); the notice of hearing does not advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the person who must be served with any opposition as required by LBR 9014-1(d)(3); the moving party did not serve the debtor; the proof of service filed in support of the motion is not signed under oath. As a result of these defects, the court will deny the motion by minute order. No appearance is necessary.

29. 11-38664-D-7 KAMLESH/REKHA PATEL
TJW-2

CONTINUED MOTION TO AVOID LIEN
OF WESSCO COMPANY, LLC
10-28-13 [30]

30. 13-31379-D-12 DAVID/DENEILLE LIND

CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
8-29-13 [1]

31. 11-22685-D-7 BLUE RIBBON STAIRS, INC.
JRM-1
HH RES LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-1-13 [1026]

Final ruling:

This matter is resolved without oral argument. This is HH RES LLC's motion seeking relief from automatic stay to pursue available insurance proceeds. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is cause for granting limited relief from stay to allow the moving party to proceed with litigation, as is necessary, to collect against available insurance proceeds. Accordingly, the court will grant limited relief from stay to allow the moving party to proceed to judgment against the debtor for the limited purpose of pursuing any available insurance proceeds. There will be no further relief afforded. Moving party is to submit an appropriate order. No appearance is necessary.

32. 13-33985-D-7 SCOTT FRASER AND THELMA
CPG-1 WHITE
EURO PACIFIC MORTGAGE, LLC
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-12-13 [14]

33. 13-29991-D-7 RANDALL/FLORA BUSK
HLG-3

AMENDED MOTION TO AVOID LIEN OF
FIA CARD SERVICES, N.A.
11-13-13 [36]

34. 12-33698-D-11 2 ANTIOCH, LLC
12-2705 DTK-2
2 ANTIOCH, LLC V. ANTIOCH
LOAN, LLC ET AL

PLAINTIFF'S MOTION TO DISMISS
ADVERSARY PROCEEDING O.S.T.
11-4-13 [75]

This matter will not be called before 10:30 a.m.

Tentative ruling:

2 Antioch, LLC (the "debtor/plaintiff") filed a Chapter 11 petition on July 25, 2012. On December 5, 2012 the debtor/plaintiff filed a complaint for declaratory relief, to quiet title, and fraudulent misrepresentation assigned adversary no. 12-2705 (the "Adversary Proceeding"). None of the causes of action asserted in the Adversary Proceeding arise under Title 11. On September 27, 2013, defendant Antioch Loan, LLC ("Antioch Loan"), filed a motion for summary judgment, or in the alternative, partial summary judgment (the "Motion"). Very shortly thereafter on October 2, 2013 the court issued an order allowing the debtor/plaintiff's then counsel to withdraw as attorney in both the Chapter 11 case and the Adversary Proceeding. As a result the debtor/plaintiff was without counsel when opposition to the Motion was due, and thus, failed to oppose the Motion. However, the debtor/plaintiff was able to obtain new counsel shortly before the hearing on the Motion. The debtor/plaintiff's new counsel appeared at the hearing and advised the court that the debtor/plaintiff opposed the Motion. Prior to the initial hearing the court issued a tentative ruling which indicated that it was inclined to grant the Motion. The court notes that its tentative ruling was drafted without considering the debtor/plaintiff's opposition to the Motion.

On November 4, 2013, the debtor/plaintiff filed a motion to dismiss its underlying Chapter 11 case and a motion to dismiss the Adversary Proceeding without prejudice. Defendants, Antioch Loan and Oxford Investor Partners, LLC filed a response to these motions, and they do not oppose dismissal of the Adversary Proceeding, but request that the dismissal be with prejudice.

The court has a real concern regarding its authority to issue a final judgment in the Adversary Proceeding. This coupled with the court's intent to dismiss the underlying Chapter 11 case, makes it clear that the Adversary Proceeding should be dismissed. The question that then remains is whether dismissal of the Adversary Proceeding should be with, or without, prejudice. Considering, 1) the court's concern that it does not have authority to issue a final judgment in the Adversary Proceeding, 2) the court issued its tentative ruling on the Motion without considering any opposition, and 3) that the parent case will be dismissed, the court intends to dismiss the Adversary Proceeding without prejudice. However, the court will condition the dismissal without prejudice on the provision that all discovery taken in the Adversary Proceeding can be used in any subsequent proceeding brought in State or Federal court by the debtor/plaintiff.

The court will hear the matter.

35. 12-33698-D-11 2 ANTIOCH, LLC
DTK-2

MOTION TO DISMISS CASE O.S.T.
11-4-13 [142]

This matter will not be called before 10:30 a.m.

Tentative ruling:

2 Antioch, LLC (the "debtor") filed a Chapter 11 petition on July 25, 2012. The case was filed as a single-asset real estate case under Bankruptcy Code ("Code") § 101(5)(B). Since the filing the debtor has managed its financial affairs as a debtor in possession. As a single-asset real estate case the debtor's sole significant asset when it filed its Chapter 11 was approximately 50 acres of undeveloped real property located in Antioch, California, commonly referred to as 3941 Neroly Road, Antioch, California (the "Property"). The Property was lost through foreclosure post petition. As a result of the post-petition foreclosure, there is no meaningful asset left in the estate, other than certain litigation claims attendant to the Property, that would allow the debtor to reorganize. The court notes that none of the litigation claims that the debtor asserts regarding the Property arise under Title 11.

As a result of the above, the debtor filed a motion to dismiss its case (the "Motion"). The Motion asserts that as a result of the loss of the Property, there is no reasonable prospect for reorganization, and conversion of the case would be of no benefit to the creditors. Antioch Loan, LLC ("Antioch Loan"), the secured creditor that foreclosed on the Property, has filed a response to the Motion. Antioch Loan requests that dismissal of the case be deferred until the court resolves a related adversary proceeding in which Antioch Loan is a defendant.

The court agrees with the debtor that there is no reasonable prospect for reorganization and that conversion of its case would be of little, or no, benefit to creditors. As such, there is no reason to keep this Chapter 11 case pending, and the court sees no reason to condition dismissal of the case on the resolution of the related adversary proceeding. Accordingly, the court intends to dismiss this Chapter 11 case and will not condition dismissal on resolution of the related adversary proceeding.

The court will hear the matter.

36. 09-29162-D-11 SK FOODS, L.P.
SH-241

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH AUSTRALIAN
FEDERAL POLICE, ET AL. O.S.T.
11-18-13 [4548]

This matter will not be called before 10:45 a.m.